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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Thomas Ryan Warren,
Plaintiff,
vs.

No.

COMPLAINT

John Butler and Melody Butler, husband
and wife; Scottsdale Treatment, Inc., an
Arizona corporation;
Defendants.

Plaintiffs Thomas Ryan Warren (“Warren”) for his Complaint alleges as follows:

1. Warren at all relevant times was a resident of Maricopa County, Arizona and worked in Maricopa County, Arizona.

2. Defendant John Butler (“Butler”) at all relevant times was a resident of Maricopa County, Arizona and was the Chief Executive Officer, Manager, and sole member of Scottsdale Treatment Institute, PLC (“STI PLC”), an Arizona limited liability company doing business in Maricopa County, Arizona. At all relevant times, Butler exercised significant economic control over STI PLC and participated in the decisions: (a) not to pay Warren the minimum wage required by state and federal law; (b) not to pay Warren for all hours worked; (c) not to pay Warren overtime compensation for all hours worked over 40 in a workweek; and (d) to terminate Warren’s employment in retaliation for engaging in protected activity under the state and federal wage and hour laws.

3. Defendant Scottsdale Treatment, Inc. (“ST Inc.”) is a related corporation. At all relevant times, Butler has been the President, Secretary, Treasurer, Director and sole shareholder of ST Inc. At all relevant times, STI PLC and ST Inc. have been under

1 the common control of Butler. Upon information and belief, Butler and STI PLC have
2 funneled the revenue and assets of STI PLC to and/or through ST Inc.

3 4. Upon information and belief, Melody Butler is married to Butler and all
4 actions by Butler were taken on behalf of their marital community. Melody Butler has
5 been named as a defendant solely for community property purposes.

6 5. The events giving rise to these causes of action occurred in Maricopa
7 County, Arizona.

8 6. This Court has personal jurisdiction over the Defendants and venue is
9 proper in this Court.

10 7. From approximately 2006 to April 22, 2014, STI PLC and Butler
11 employed Warren as a behavioral health technician/counselor.

12 8. Throughout that time, Mr. Warren competently performed his job.

13 9. Throughout Warren's employment, STI PLC and Butler compensated
14 Warren only for his actual time spent counseling, including individual screenings, group
15 sessions, one-on-one counseling, and revocation evaluations.

16 10. As compensation, STI PLC and Butler paid Warren a set amount of money
17 for each different type of consultation session, which lasted a specifically designated
18 amount of time.

19 11. Warren received no compensation from STI PLC or Butler for attending
20 regular mandatory meetings or for performing regular non-counseling tasks such as
21 administrative work and training of other counselors, or for waiting during and after no-
22 show appointments.

23 12. Despite paying no compensation for a no-show appointment, STI PLC and
24 Butler required Warren to wait at least fifteen (15) minutes after the start of the
25 consultation and then required him to remain at work waiting for his next scheduled
26 appointment.

27 13. The no shows occurred most frequently with court-ordered DUI
28 screenings, which STI PLC scheduled only thirty (30) minutes apart for Warren so he

1 was stuck waiting an additional fifteen (15) minutes for the next appointment after being
2 required to wait on premises for the previous client to arrive.

3 14. At times, Warren had as many as seven (7) no shows on a particular day.

4 15. STI PLC staff controlled all appointment scheduling for Warren.

5 16. In March 2014, after learning that he should be paid for all time worked,
6 Warren began complaining about not being paid for waiting time.

7 17. On March 12, 2014, Warren emailed his supervisors Karen Mavrikos and
8 Whitedove Ballog regarding his belief that that he should be paid for time spent waiting
9 on no-show appointments.

10 18. With the email, Warren forwarded a U.S. Department of Labor Fact Sheet
11 regarding the requirement of paying for waiting time.

12 19. That same day, Mavrikos responded that she had forwarded the
13 information and Fact Sheet to CEO Butler.

14 20. Approximately one week later, Warren met with Butler and Mavrikos
15 regarding the issue. In that meeting, Butler acknowledged receiving the Fact Sheet that
16 Warren had forwarded, but informed Warren that he did not agree with the information
17 provided in the Fact Sheet or that Warren was entitled to compensation for such time.

18 21. In that meeting, Warren explicitly stated his disagreement with Butler on
19 that issue and that he believed he should receive compensation for all time worked.

20 22. On March 27, 2014, in a staff meeting, Warren again brought up his
21 concern that the counselors were not being compensated for time spent waiting on
22 clients who did not show up.

23 23. The next day, Butler emailed Warren and invited him to have another
24 meeting to discuss the issue.

25 24. That meeting between Butler and Warren occurred on April 22, 2014.

26 25. Earlier that morning, Ballog had sent Warren an email indicating that he
27 would no longer be scheduled for 30-minute DUI screenings, a practice that STI PLC
28 had engaged in for at least the previous two years.

1 26. At noon that day, Butler, Mavrikos and Ballog met with Warren. In the
2 meeting, Butler asked Warren what he wanted to resolve the issue and Warren
3 responded that he wanted to be compensated for all of his time worked.

4 27. Warren presented Butler with calculations showing that he was owed
5 approximately \$6,000-\$8,000 per year for uncompensated time related to canceled
6 appointments. In response, Butler told Warren "I'll see you in court" and ended the
7 meeting.

8 28. Warren left the office at approximately 12:30 p.m.

9 29. At 3:30 p.m. on April 22, 2014, Warren returned to the STI PLC office. At
10 that time, Butler asked Warren if he had received the letter from STI PLC's lawyer Paul
11 Crane.

12 30. When Warren indicated he had not received it, Butler handed him the
13 letter terminating Warren's employment and told him to take his personal effects and
14 leave the premises.

15 31. In the letter incorrectly dated April 21, Butler referenced the April 22
16 meeting in which the only topic was Warren's concerns about not being paid for certain
17 time worked. Butler specifically stated: "Our brief meeting earlier today leaves me
18 convinced that all parties concerned will be better served by terminating your
19 employment, effective immediately."

20 32. In the letter, Butler likewise specifically referenced that Warren would not
21 be scheduled for any further work after that day and that he should submit a timesheet
22 for work done through April 22, 2014.

23 33. Throughout his employment, Warren performed at least at a satisfactory
24 level, diligently and competently serving the STI PLC. Warren never received any
25 discipline, formal correction, or warnings regarding performance.

26 **Count One (Minimum Wage Violations**
27 **Under the Arizona Minimum Wage Act)**

28 34. Warren incorporates herein all previous allegations in this Complaint.

1 35. At all relevant times, Warren was an employee under the Arizona
2 Minimum Wage Act, A.R.S. § 23-363 *et seq.*

3 36. At all relevant times, Butler and STI PLC were an employer under the
4 Arizona Minimum Wage Act, A.R.S. § 23-363 *et seq.*

5 37. STI PLC and Butler failed to pay Warren the applicable minimum wage
6 for all hours worked, as required by A.R.S. § 23-363 and implementing regulations.

7 38. Pursuant to A.R.S. § 23-364, Warren is entitled to recover from Butler the
8 balance of the wages owed, including interest thereon, and an additional amount equal
9 to twice the underpaid wages.

10 39. Warren also is entitled to recover his attorneys' fees and costs incurred
11 herein pursuant to A.R.S. § 23-364.

12
13 **Count Two (Minimum Wage Violations**
 Under the Fair Labor Standards Act)

14 40. Warren incorporates herein all previous allegations in this Complaint.

15 41. At all relevant times, Butler and STI PLC were an employer covered under
16 the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.*

17 42. At all relevant times, Warren was an employee covered under the FLSA.

18 43. STI PLC and Butler failed to pay Warren the applicable minimum wage
19 for all hours worked in violation of the FLSA.

20 44. STI PLC and/or Butler's conduct described above was willful.

21 45. Warren is entitled to recover from Butler his unpaid minimum wages due
22 and an equal amount as liquidated damages.

23 46. Warren is entitled to recover his attorneys' fees incurred herein pursuant to
24 29 U.S.C. § 216.

25 **Count Three (Overtime Violations**
26 **Under the Fair Labor Standards Act)**

27 47. Warren incorporates herein all previous allegations in this Complaint.
28

1 48. At all relevant times, Butler and STI PLC were an employer covered under
2 the FLSA.

3 49. At all relevant times, Warren was an employee covered under the FLSA.

4 50. Warren worked approximately 55-60 hours per week in his employment.

5 51. STI PLC and Butler failed to pay Warren overtime compensation for all
6 work weeks in which Warren worked in excess of forty (40) hours, in violation of the
7 FLSA.

8 52. STI PLC and/or Butler's conduct described above was willful.

9 53. Warren is entitled to recover from Butler his unpaid overtime
10 compensation and an equal amount as liquidated damages.

11 54. Warren is entitled to recover his attorneys' fees incurred herein pursuant to
12 29 U.S.C. § 216.

13
14 **Count Four (Retaliation**
 Under the Arizona Minimum Wage Act)

15 55. Warren incorporates herein all previous allegations in this Complaint.

16 56. At all relevant times, Warren was an employee under A.R.S. § 23-363 *et*
17 *seq.*

18 57. At all relevant times, STI PLC and Butler were an employer under A.R.S.
19 § 23-363 *et seq.*

20 58. STI PLC and Butler violated A.R.S. § 23-364 by terminating Warren's
21 employment in retaliation for asserting his claim or right under the Arizona Minimum
22 Wage Act, for assisting any other person in doing so, and/or for informing any person
23 about their rights.

24 59. As a direct result of STI PLC and Butler's conduct described above,
25 Warren has suffered emotional distress, reputational harm, lost income in the form of
26 past, present and future wages and benefits, and other monetary and non-monetary
27 benefits due him.
28

1 71. At all relevant times, Warren was a creditor with a claim under A.R.S.
2 §44-1001.

3 72. Upon information and belief, Butler and STI PLC have declared and/or
4 paid a distribution and other payments to Butler and ST Inc.

5 73. At the time of such distributions and payments, STI PLC was insolvent
6 under A.R.S. § 44-1002 because (1) the sum of its debts was greater than all of its assets
7 at a fair valuation; or (2) STI PLC was generally not paying its debts as they were due.

8 74. Pursuant to A.R.S. § 44-1004, all transfers made from STI PLC to Butler
9 and ST Inc. were fraudulent because STI PLC and Butler (1) made the transfers with
10 actual intent to defraud Warren; or (2) made the transfers without receiving a reasonably
11 equivalent value for the transfers and STI PLC had incurred or was incurring obligations
12 beyond its ability to pay.

13 75. Pursuant to A.R.S. § 44-1005, all transfers made from STI PLC to Butler
14 and ST Inc. after Warren's claim arose were fraudulent because STI PLC did not receive
15 a reasonably equivalent value in exchange for the transfers and STI PLC was insolvent
16 at the time of or became insolvent as a result of the transfers.

17 76. As a result of the fraudulent transfers, STI PLC does not have the funds to
18 pay Warren's judgment against STI PLC and Warren is entitled to all of the remedies
19 under A.R.S. 44-1007 including but not limited to: (1) garnishment against the
20 fraudulent transferees or the recipient of the fraudulent obligation; (2) avoidance of the
21 fraudulent transfers; (3) attachment or other provisional remedy against the assets
22 transferred or other property of the transferee; and (4) an injunction against further
23 disposition of the transferred assets.

24 77. This claim arises out of contract and therefore Warren is entitled to
25 recover his reasonable attorney's fees incurred in prosecuting this claim.

26 78. Warren demands a jury trial on all issues triable to a jury.

27 WHEREFORE, Plaintiff Thomas Ryan Warren prays for judgment against John
28 Butler and Melody Butler, husband and wife, and Scottsdale Treatment Inc. as follows:

- 1 A. For an award of unpaid minimum wages against The Butlers in an amount
- 2 to be proven at trial;
- 3 B. For an additional amount against The Butlers equal to twice the unpaid
- 4 minimum wages under A.R.S. § 23-364(G);
- 5 C. For an award of unpaid overtime compensation against The Butlers in an
- 6 amount to be proven at trial;
- 7 D. For an award of compensatory damages against The Butlers for lost back
- 8 wage, lost front wages, other economic losses, pain and suffering,
- 9 emotional distress, harm to reputation and other losses incurred by Warren
- 10 as a result of Butler and STI PLC's conduct;
- 11 E. For an award against The Butlers of the statutory damages of at least \$150
- 12 per day under A.R.S. § 23-364(G);
- 13 F. For an award of liquidated damages against The Butlers;
- 14 G. For an award against Defendants of the value of the assets fraudulently
- 15 transferred;
- 16 H. For a garnishment against Defendants;
- 17 I. For an avoidance of the fraudulent transfers or obligations;
- 18 J. For an attachment or other provisional remedy against the assets
- 19 transferred or other property of Defendants;
- 20 K. For an injunction against further disposition by Defendants of the assets
- 21 transferred or other property;
- 22 L. For an award of attorneys' fees and related expenses;
- 23 M. For an award of prejudgment and post-judgment interest;
- 24 N. For an award of Warren's costs of suit incurred herein; and,
- 25 O. For an award of such other relief as the Court may deem just and proper.
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1 DATED this 16th day of February, 2016.

2 ROBAINA & KRESIN PLLC

3
4 By/s/ David C. Kresin

5 David C. Kresin
6 Attorneys for Plaintiff
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